

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**





76-6014

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

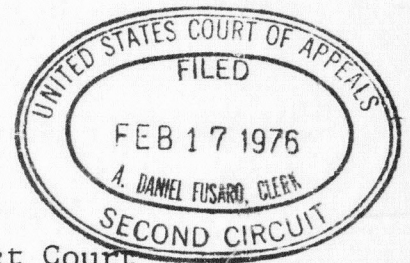
Docket No. 76-6014

KEITH D. GAINES,  
Appellant,

-against-

MARTIN R. HOFFMAN, SECRETARY  
OF THE ARMY and SUPERINTENDENT,  
UNITED STATES MILITARY ACADEMY,  
GENERAL SIDENY BERRY,

Respondents.



On Appeal from the United States District Court  
for the Southern District of New York

APPENDIX TO APPELLANT'S BRIEF

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
KEITH D. GAINES,

Plaintiff,

-against-

MARTIN R. HOFFMAN, Secretary of the  
Army, and SUPERINTENDENT, UNITED  
STATES MILITARY ACADEMY, GENERAL  
SIDNEY BERRY,

Defendants.  
-----X

#43706  
: OPINION AND ORDER  
:

: 75 Civ. 5120  
: (JMC)  
:

CANNELLA, D.J.:

The motion of Keith D. Gaines, formerly a cadet  
at the United States Military Academy at West Point, for a  
preliminary injunction restraining the defendants from  
ordering him to active duty in the United States Army pend-  
ing a trial on the merits of this action is hereby denied.  
The Court finds that plaintiff's claim that the disciplinary  
proceedings which resulted in his separation from the  
Academy were conducted in violation of the Academy's own  
rules and regulations, as well as in violation of his right  
to due process of law, has little likelihood of succeeding  
on the merits and fails to raise "sufficiently serious  
questions going to the merits to make them a fair ground for  
litigation...." Sonesta Int'l Hotels Corp. v. Wellington

FILED  
JAN 13 1976  
SOUTHERN DISTRICT OF NEW YORK  
CLERK

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Associates, 483 F.2d 247, 250 (2d Cir. 1973).

The facts surrounding plaintiff's dismissal from West Point are as follows. On April 30, 1975, Gaines, then a cadet in good standing scheduled to graduate in June 1975, failed to attend a regularly scheduled surveying class in which he was enrolled. After class, Cadet Anderson, one of Gaines' classmates and the cadet responsible for taking the roll in the surveying class, stopped at Gaines' room to question him regarding his absence. Anderson testified at Gaines' hearing before the Board of Officers investigating the incident that Gaines told him he had previously been excused from the class by the instructor, Captain Hausman. Gaines, on the other hand, testified before the Board of Officers that he never told Anderson that he had obtained Captain Hausman's permission to miss class, but that he did tell Anderson that he intended to call the instructor for authorization to turn in an assignment due at the missed class.

Cadet Anderson was apparently satisfied with Gaines' explanation until two days later (May 2, 1975), when, according to the testimony of Anderson, Captain Hausman and two other cadets present in the surveying class on May 2, Gaines told Captain Hausman that he had missed the May 30 class because he had been on a "concrete field trip".



Captain Hausman testified that he took Cadet Gaines to have meant that he had missed class because he had been on an authorized off-post field trip taken by the class members in the course known as "concrete". At this point, Cadet Anderson determined that there was a conflict between what Cadet Gaines had told him on April 30th and what Cadet Gaines had told Captain Hausman on May 2nd, and, that therefore, Cadet Gaines had violated the Cadet Honor Code, which provides that "A cadet does not lie, cheat or steal or tolerate those who do."

While the procedures followed by the Academy in processing Gaines' case were substantially the same as those detailed by the Second Circuit in *Andrews v. Knowlton*, 509 F.2d 898 (2d Cir. 1975), cert.denied, 44 U.S.L.W. 3205 (Oct. 6, 1975), Gaines was processed under a newly revised set of Cadet Honor Committee Procedures. Under these procedures, promulgated by the 1974-75 Cadet Honor Committee, a cadet is to report an alleged honor violation to his company Honor Representative, who, if he "feels there is a possible honor violation" is to consult with the Regimental Investigating Officer regarding the convening of a subcommittee. The subcommittee, composed of three voting members, is charged with investigating the allegations to the fullest extent and resolving factual disputes. If the



subcommittee recommends dismissal of the charges, it is to notify the Chairman of the Honor Committee, who may approve the recommendation or disapprove it and present the case to full committee. If the subcommittee decides to present the case to the full committee, or if the Chairman disapproves their recommendation to dismiss, the cadet under investigation is then given notice that he must appear before the full committee.

At this stage the cadet is permitted to choose a member of the Honor Committee to serve as his advisor in the proceedings to follow. The advisor is given complete access to the report of the subcommittee and is to aid the cadet in any investigation he wishes to conduct prior to appearing before the full committee, comprised of 12 members of the Honor Committee. The cadet is given an initial opportunity to present his side of the case and is then questioned by the members of the committee. Next, the committee hears from all witnesses and concludes its hearing by permitting the cadet to make a final statement. There is no provision regarding the cadet's right to cross-examine the witnesses called. After full discussion of the case, the secretary reads the allegation to the committee and they cast a secret ballot. If the committee finds the allegations to have been unsupported by



the evidence the cadet is "allowed to return to his company." If, however, the committee supports the allegation, the procedure is as follows:

4. a. Cadets determined by the Cadet Honor Committee to have violated the Cadet Honor Code will be immediately escorted to the Officer-in-Charge, USCC, who may instruct subject cadet to move into Transient Barracks and notify his parents of the Honor Committee's findings.

b. From this point onward, the Cadet Honor Committee is not involved in the procedures against a cadet. The cadet may resign or request a Board of Officers be appointed to hear his case.

(1) Resignation: In the event a cadet elects to resign he will begin immediate out-processing at the direction of Headquarters, USCC.

(2) Board of Officers: If a cadet elects to have a Board of Officers appointed to hear his case, the Commandant will prepare correspondence to the Superintendent requesting that he appoint a Board of Officers to investigate the case. Board of Officers findings, if adverse and approved by the Superintendent, are forwarded to Headquarters, Department of the Army, for final action. The Deputy Commandant of Cadets will inform the Cadet Honor Committee of the final disposition of the case. The Cadet Honor Committee, in turn, will inform the Corps of Cadets.

In the instant case, the record is silent as to all proceedings prior to the convening of the Cadet Honor Committee. Additionally, although the proceedings before the Cadet Honor Committee were tape recorded, a record of that hearing has not been presented to this Court. The only information in the record regarding the proceedings before the Honor Committee is



contained in a two-page form filled out by a member of the Honor Committee, and a one-sentence statement reflecting the specification voted upon by the Committee. The substance of the information included on the cadet form is under the heading 2. "Explanation of Circumstances and Summary of Testimony":

Cdt. Gaines missed surveying class on Wed. 30 May [sic]. He was working on a concrete design project, and claims he was unaware that he had missed The class until asked by Rick Anderson, his section marcher, where he was. Anderson claims That Gaines indicated that CPT Hausman, his instructor had authorized The absence. CPT Hausman denied giving GAINES SUCH AUTHORIZATION. Gaines turned in his paper Thurs. morning. He was asked Fri. by CPT Hausman (during the class period) why he was absent on Wed. Gaines allegedly replied That he was "on a concrete field trip" or words to That effect. This reply was verified by CPT Hausman, & Cdts Johnigan (Sp.), Washecheck, and Anderson, all of whom are members of Gaines' surveying class. Cdt. Ward, E-3 honor rep, testifies that Gaines told him That a note of explanation was put on the paper (which had been turned in late) INVESTIGATION revealed that no such note exists, the statement was later denied by Gaines.

The report continues,

3. The following allegation was discussed and voted upon by the Cadet Honor Committee:

Cadet Gaines is charged with having violated the Cadet Honor Code in that he did on or about 02 May at West Point attempt to deceive by lying.



4. The Cadet Honor Committee

a. does not support the allegation and recommends that no action be taken

✓ b. Supports the allegation and recommends that subject cadet be separated from the Corps. of Cadets.

The specification voted upon by the Honor Committee was as follows: "Keith Gaines is alleged to have violated the Cadet Honor Code in that on or about 2 May 1975 he did attempt to deceive by lying. Please vote the allegation valid or invalid."

Upon being apprised of the decision, Cadet Gaines declined to resign and chose to take his case before a Board of Officers. The procedures to be followed by a Board of Officers are set forth in detail at 32 C.F.R. §519.1-.5. Gaines does not challenge the validity of these regulations which provide the full panoply of due process rights, including notice and the right to counsel. What he does challenge, however, is the authority of the Board of Officers to consider the charge that he lied to Cadet Anderson on April 30, 1975. In apparent reliance on certain language in Andrews, Gaines contends that the Honor Committee is the functional equivalent of a grand jury and that a cadet cannot be brought before a Board of Officers to answer a charge "not validated" by the Honor Committee. He therefore urges that the Board of Officers was without authority to consider the charges



arising out of the April 30 incident and that Cadet Gaines' right to due process of law was violated in that (1) the Academy having permitted the Honor Committee to act as a grand jury, it "is bound by considerations of due process to abide by that Committee's determinations" (Plaintiff's Brief at 11); and (2) Gaines was prejudiced by the Board of Officers having considered two allegations of lying rather than one.

The Court rejects these arguments in that the record does not support the conclusion that the Cadet Honor Committee found the April 30 allegation unfounded; nor is there any support for the contention that a Board of Officers cannot consider an alleged breach of the Honor Code absent a previous finding of "guilt" by the Cadet Honor Committee.

The written record of the proceedings before the Cadet Honor Committee reflects that the Committee was never asked to vote upon the validity of the April 30 allegation.<sup>1/</sup>

There is nothing in the record to support plaintiff's contention that the Committee's failure to mention the April 30 allegation in its findings indicates that that

---

<sup>1/</sup> Although it is likely that the Committee made no finding as to the April 30th incident because the finding as to the May 2 lie was sufficient to subject Cadet Gaines to the consequences flowing from a finding of violation of the Honor Code, this Court's decision is not premised upon such surmise.



allegation was held unfounded and invalid. Rather, the most that can be said with any degree of certainty is that the Committee took no position one way or the other regarding the April 30 incident. With the case in this posture, plaintiff could succeed on his theory that the Academy violated its own regulations only if those regulations provided that a Board of Officers is without authority to consider an alleged violation of the Honor Code unless the Cadet Committee has first made a specific finding that the allegation is valid. Not only is there nothing in the various regulations submitted to the Court which even suggests such a rule, but the uncontradicted affidavit of Major Daniel Shimek, the Staff Judge Advocate at West Point, specifically refutes the existence of such a policy. In discussing the submission of a case to the Board of Officers, Major Shimek states that in preparing the specification to be presented to the Board (a responsibility of his office), he is often required to make

two or more specific allegations out of a general allegation reported by the Cadet Honor Committee. Moreover, at times, these specification may include an allegation not originally considered by the Committee or considered by the Committee and rejected.

Affidavit of Major Shimek at 2. In accord with Major Shimek's



affidavit is the affidavit of Cadet William E. Andersen (dated Oct. 24, 1975), presently the Chairman of the Cadet Honor Committee, which states "the Superintendent may refer an honor case to a Board of Officers without resort to a prior Cadet Honor Committee proceeding or allegation and he may, at his discretion, prevent the Committee from acting at all in cases where he determines such action would be inappropriate or inadvisable."

After a careful reading of all rules and regulations submitted by the parties, the Court finds nothing which contradicts the statements of Major Shimek and Cadet Andersen. While there can be no doubt that the Cadet Honor Committee has become an integral part of the separation process (Andrews, 509 F.2d at 905-06), there is nothing to indicate that the Academy has ceded any ultimate authority to the Honor Committee. In fact, the Regulations for the United States Military Academy (March 15, 1971) which were promulgated under the authority of the Secretary of the Army as provided for in 10 U.S.C. §3012 state that a cadet who is subject to separation for violation of the Cadet Honor Code (§12.14) "May, in the discretion of the Superintendent ... be brought before a board of officers convened by the Superintendent, or be



permitted to resign in lieu thereof," (§16.03(a)). While it is somewhat strange that a memorandum entitled "USCC Processing of Cadet Honor Cases" issued by the Academy and dated August 10, 1973 is silent regarding the procedure to be followed in the event that the Cadet Committee finds the charges unsubstantiated, this memorandum does state that

A cadet who is alleged to have violated the Code may at the discretion of the Superintendent, be allowed to resign, be tried by court-martial, or be brought before a board of senior officers convened by the Superintendent to investigate the matter and to make findings.

§2.a. USCC Processing of Cadet Honor Cases. In light of the above as well as Major Shimek's and Cadet Andersen's affidavits, this Court is not persuaded that the use of the grand jury analogy in Andrews was in fact a finding by the court of appeals that custom and usage had created a situation wherein the Cadet Honor Committee was in all respects the equivalent of a grand jury. Finally, the Court would be hesitant to infer such a sweeping modification of the published regulations, especially when it involves a curtailment of the authority of the Board of Officers, a body whose authority is specifically provided for in 32 C.F.R. §519.1-.5 and the official Regulation of the United States Military



Adm. Serv. Bd. v. Galt, 509 F.2d at 905.

Gaines also alleges that two members of the Board of Officers were biased and insufficiently impartial to render a fair judgment. As to Captain Hayes, although he did state that he would consider a vote to acquit a reversal of the Cadet Honor Committee, he explained this by noting "I think you would have to say that but it's no different from any other proceeding that appears in a second step along the way." (Record at 61). He also stated that he understood that the Board of Officers' inquiry was de novo and that he could and would "make a determination based on just what you hear today and not be influenced by anything else that may have gone on." (Record at 60). In light of these statements and the "presumption of honesty and integrity in those serving as adjudicators," (Withrow v. Larkin, 421 U.S. 35, 47 (1975)), the Court is convinced that Captain Hayes was able to consider the evidence presented to the Board of Officers without bias or prejudgment.

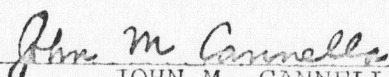
Gaines' challenge to Colonel Buckley, the President of the Board of Officers, borders on the frivolous. First of all, it was not made at the time of the hearing, and secondly, the argument that Colonel Buckley's rank and

Knowledge of the Honor System should have caused him to  
qualify his statement. It is utterly without merit or basis in  
logic.

The above constitute the Court's findings of  
fact and conclusions of law pursuant to Federal Rule of  
Civil Procedure 52(a).

IT IS THEREFORE ORDERED that plaintiff's  
motion for a preliminary injunction be and hereby is  
denied; and it is further

ORDERED that the induction of Keith Gaines into  
the United States Army be and hereby is stayed until  
January 26, 1976.

  
JOHN M. CANNELLA  
United States District Judge

Dated: January 12, 1976  
New York, N.Y.



UNITED STATES CORPS OF CADETS  
West Point, New York 10996

date 13 May, '75

SUBJECT: Honor Board of Cadet Grimes, Keith  
(last name) (first) (S.C.)

E-3  
Co.

A15  
Cl.

Commandant of Cadets  
United States Corps of Cadets  
West Point, New York 10996

1. Cadet Grimes was brought before the Honor Board on 12 May, '75 for a possible violation of Code.

2. Explanation of Circumstances and Summary: ~~30000~~

Cad. Grimes missed surveying class on Wed, ~~2 May~~. He was working on a concrete design project, and claims he was unaware he had missed the class until asked by Rick Anderson, his friend, where he was. Anderson claims that Grimes indicated that CPT Hausman, his instructor had authorized the absence. CPT Hausman denied giving Grimes such authorization. Grimes turned in his paper Thurs. evening. He was asked Fri by CPT Hausman (during the class period) he was absent on Wed. Grimes allegedly replied that he was working on a concrete "field trip" or words to that effect. This reply was verified by CPT Hausman, Cdt. Johnigan, Washchek, and Anderson, all of whom are members of Grimes' section surveying class. Cdt. Ward, E-3 Honor rep, testified that a note of explanation was put on the paper (which was turned in late). The note stated that the statement was explained by Grimes.



Cadet Harry Jamison, C-3, 75 9700  
Cadet Dan [unclear], E-3, 75 9001  
Cadet [unclear], E-3, 75 1001

15

1. Following officer testified: CPT William Harrison, Dept of ES, 1003  
3. The following allegation was discussed and voted upon by the Cadet Honor Committee:

Cadet Haines is charged with having violated the Honor Code in that he did on or about 07 May at West Point  
(date) attempt to deceive by lying.

4. The Cadet Honor Committee

- a. Does not support the allegation and recommends that no action be taken.  
☒ b. Supports the allegation and recommends that subject cadet be separated from the Corps of Cadets.

5. The following witnesses appeared before the Committee or were knowledgeable of the facts in the case but did not appear. (Indicate name, rank or class, organization, duty position.)

Honor Violation reported by:

☐ Self  
☒ Other cadet  
☐ Officer

Michael D. Fletcher

(Signature)

Michael D. Fletcher

(Name Typed or Printed)

2nd regt. Investigating off.

(Position) Cadet Honor Code



HEADQUARTERS UNITED STATES MILITARY ACADEMY  
OFFICE OF THE COMMANDANT OF CADETS  
WEST POINT, NEW YORK 10996

MACC-A

14 May 1975

SUBJECT: Alleged Violation of the Cadet Honor Code by Cadet  
Keith D. Gaines, Company E3, Class of 1975

Superintendent  
United States Military Academy  
West Point, New York 10996

1. On Wednesday, 14 May 1975, Cadet Keith D. Gaines appeared before the Deputy Commandant for an alleged violation of the Cadet Honor Code as reported by the Chairman of the Cadet Honor Committee (Incl 1).
2. Cadet Gaines was informed of his rights under Article 31, Uniform Code of Military Justice, of his rights to counsel and of the offense with which he was charged. He was advised that in compliance with Regulations, USMA, a cadet who is found by the Cadet Honor Committee to have violated the Cadet Honor Code has the option of resigning or of appearing before a Board of Officers convened to hear the case and to make findings as to whether the Cadet Honor Code was violated. Cadet Gaines was further advised that the decision to resign or to appear before a Board of Officers was of necessity his own, that prior to arriving at his decision he was free to seek the advice of anyone, to include legal counsel, officers stationed at West Point or his parents, and that he would be given reasonable time to make a decision.
3. Cadet Gaines elected to have a Board of Officers hear his case. The Department of Law was notified and is currently making arrangements to provide counsel.



MACC-A

14 May 1975

SUBJECT: Alleged Violation of the Cadet Honor Code by Cadet  
Keith D. Gaines, Company E3, Class of 1975

4. Accordingly, I recommend that a Board of Officers be appointed under the provisions of AR 15-6 and paragraph 15.04, USMA Regulations, dated 15 March 1971, to investigate, reach findings, and to report those findings to you for further disposition of the case.



W. F. ULMER, JR.  
Brigadier General, USA  
Commandant of Cadets

1 Incl  
as



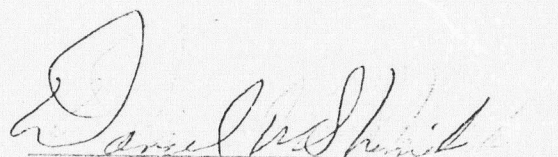


3. The Office of the Staff Judge Advocate analyzes the Cadet Honor Committee Report, interviews witnesses and makes such other inquiries as it deems necessary in order to ascertain whether sufficient evidence exists to support a recommendation to the Superintendent that he convene a Board of Officers to investigate an alleged honor violation. Although this office utilizes the Cadet Honor Committee Report as a starting point in its review, it is not bound by the conclusions of the Cadet Honor Committee in this regard and the recommendations are the result of an independent investigation and analysis of all of the surrounding facts and circumstances. If, as in Plaintiff's case, this office concludes that evidence of an honor violation or violations does in fact exist, then it will forward to the Superintendent the Commandant's letter, the Cadet Honor Committee Report and a proposed Letter of Instruction

to the Board of Officers (R. 14), together with the Staff Judge Advocate's recommendation presented, orally or in writing, that the Superintendent forward a Board of Officers to investigate the matter.

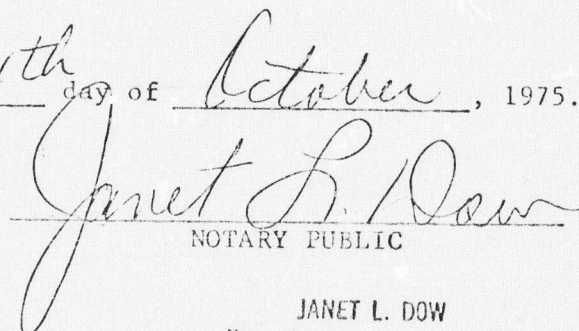
4. The proposed letter of instruction to the Board of Officers is prepared for the signature of the Adjutant General, who signs at the direction of and for the Superintendent. It is drafted by this office and contains specifications specific enough to provide the cadet concerned with notice of the allegations against him. Preparation of these specifications often requires pulling two or more specific allegations out of a general allegation reported by the Cadet Honor Committee. Moreover, at times, these specifications may include an allegation not originally considered by the Committee or considered by the Committee and rejected. In sum, the specifications presented to the Board of Officers result from the independent investigation and analysis of the Office of the Staff Judge Advocate and may vary both in nature and scope from those reported by the Cadet Honor Committee.

FURTHER, the deponent sayeth naught.

  
DANIEL W. SHIMEK

STATE OF NEW YORK )  
                                  ) SS.  
COUNTY OF ORANGE )

SIGNED and sworn to before me this 24<sup>th</sup> day of October, 1975.

  
NOTARY PUBLIC

JANET L. DOW  
Notary Public, State of New York  
Appointed in Orange County  
Commission Expires Mar. 30, 1976

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DEPARTMENT OF THE ARMY  
HEADQUARTERS UNITED STATES CORPS OF CADETS  
WASHINGTON, D.C. 20315

10 June 1973

1. Subject: Cadet Honor Code; Violation

2. Reference: USMA, Regulations, USMA, 17.01, Cadet Honor Code

1. Purpose: This document is to provide the procedures to be followed when a cadet is alleged to have violated the Cadet Honor Code.

2. Policies:

a. Regulations, USMA state that a cadet who violates the Cadet Honor Code will be separated from the Academy. A cadet who is alleged to have violated the Code may at the discretion of the Superintendent, be allowed to resign, be tried by court-martial, or be brought before a board of senior officers convened by the Superintendent to investigate the matter and to make findings.

b. Supervision of the Cadet Honor Code is the responsibility of the Commandant of Cadets (para 17.01, Regulations, USMA). The Deputy Commandant monitors the activities of the Cadet Honor Committee and Honor System.

c. An apparent violation of the Cadet Honor Code discovered by an officer will be reported to his Head of Department or Activity, who will in turn refer the matter to the Deputy Commandant of Cadets who will refer it to the Chairman, Cadet Honor Committee.

3. Procedures:

a. Cadets determined by the Cadet Honor Committee to have violated the Cadet Honor Code will be immediately escorted to the Officer-in-Charge, USCC.

b. Officer-in-Charge will:

(1) Instruct the cadet to call his parents to advise them of his situation.

(2) Orient the cadet on his restrictions while in the Transient Barracks (Chapter 8, Guard Regulations, USCC, dated 15 June 1970), have the cadet assigned to a room, and permit the cadet to return to his regularly assigned room to pick up bedding toilet articles, and changes of clothing.

(3) Notify S1, USCC, immediately if prior to 2300 hours, at 0800 hours the following morning for cadets entering the Transient Barracks 2300 hours.



✓(1) Notify Commandant, Deputy Commandant and Regimental Commander of the cadet concerned.

✓(2) Obtain records of the cadet from Personnel, DCCC, and the company tactical officer.

✓(3) Obtain the report of the Cadet Honor Committee.

✓(4) Insure that the cadet has contacted his parents.

✓(5) Arrange for interview of the cadet by the Deputy Commandant.

(6) If advised by the Deputy Commandant that the cadet elects to resign, notify Personnel Section, DCCC, and instruct the cadet to report there to initiate resignation processing. The resignation will be processed directly from the cadet to the Commandant; no Tactical Officer or Regimental Commander is required.

(7) If advised by the Deputy Commandant that the cadet elects to have a board of officers hear his case:

(a) Notify SOS, USMA; SJA; USMA Liaison Officer (DCSPER)

(b) Arrange for legal counsel for the cadet, if desired.

(c) Prepare correspondence to the Superintendent requesting that he appoint a board of officers to investigate the case.

(d) Instruct the cadet to continue attendance at all academic instruction except when the Board of Officers is in session.

(e) Advise the Chairman, Cadet Honor Committee, of the cadet's decision to face a Board of Officers.

d. Deputy Commandant will:

(1) Review the Honor Committee's report of the case.

(2) Prepare an initial letter to the parents of the cadet advising them of the alleged violation of the Cadet Honor Code.

(3) In a personal interview with the cadet concerned:

(a) Inform the cadet of the charge and of the allegations of the Cadet Honor Committee.

(b) Advise the cadet of his rights under Article 31, UCMJ and of his right to counsel.

(c) Insure that the cadet understands the allegation and the options of resigning or electing to have the matter considered by a Board of Officers.



(d) Advise the cadet to consult further with his parents or counsel, if desired, prior to making his decision. 22

(4) Upon receiving the cadet decision, instruct S1, USCC to process the case accordingly.

(5) After final disposition of the case, inform the Chairman, Cadet Honor Committee, in writing of the results of final action. (The Cadet Honor Committee will, in turn, inform the Corps of Cadets).

(6) Prepare an appropriate letter to the cadet's parents advising them of final disposition of the case.

(7) Submit a report to the Deputy Commandant by a Head of Department or Activity, orally and in writing, if appropriate, to the findings. The Chairman, Cadet Honor Committee should have the cadet who performed action with the Department concerned explain the findings to the Department Head, as appropriate.

4. For your information a copy of a report of the Honor Committee Proceedings, prepared by the Chairman, Cadet Honor Committee, is attached.

FOR THE COMMANDANT OF CADETS:

1 Incl  
as

  
HENRY S. LARSEN, JR.  
LTC, FA  
S1, USCC

DISTRIBUTION:

1 Commandant  
1 Deputy Commandant  
30 S1, USCC  
15 ea Regt Cdr  
5 ea Dir  
3 SJA  
3 C/S, USMA  
3 DCSPER (USMA Branch)  
50 Chairman, Cadet Honor Committee  
5 Records, USCC



CADET HONOR COMMITTEE  
UNITED STATES CORPS OF CADETS  
West Point, New York 1997

23

10 June 1973

CADET HONOR COMMITTEE PROCEDURES

The following information is provided in order to explain the procedure adopted by the Cadet Honor Committee for the processing of alleged honor violations.

I - Sub-Committee Procedures

A. The aim of the Sub-Committee is to assemble and present all evidence of facts and circumstance surrounding an allegation of a violation of the Cadet Honor Code in order to enable the voting members of the full committee to make a just decision.

B. The following principles shall serve as a guide to this end and, additionally, as a method of coordination with the officers of the Honor Committee. The flexibility, thoroughness, and conscientiousness of the Honor Committee have been the basis for the faith of the Corps in its Honor Committee; therefore, it is imperative that these standards be maintained within the Sub-Committee procedure.

1. All possible honor violations will be reported by the accusing cadet to the Company Honor Representative, who will make a preliminary investigation. If he concludes that a possible violation has been committed, he will consult with the Regimental Investigating Officer to determine the necessity of convening a Sub-Committee. The Sub-Committee may be waived completely at the discretion of the Chairman of the Committee, and the case brought directly to a Full Committee.

2. The Sub-Committee shall be composed of three voting members; a Chairman, a Recorder, and a Member. In most cases the Regimental Investigating Officer (RIO) of the regiment involved will chair the Sub-Committee. However, at the discretion of the Chairman of the Honor Committee, a RIO from another regiment may be chosen, or the Vice Chairman of the Honor Committee may chair the Sub-Committee. The Chairman of the Sub-Committee shall select the Member from among the Regimental First Class Honor Representatives, and a Recorder from among the Regimental Second Class Honor Representatives. It will also be the duty of the Chairman to select the time and place of the Sub-Committee meeting, arrange for the appearance of all witnesses and the accused, preside at the Sub-Committee meeting and present the case to the Full Honor Committee, if necessary. It will be the duty of the Recorder to take complete notes of the hearing, compile all statements of the accused and witnesses, and write a final report. In the event the case goes to the Full Committee, the Recorder will



...the Secretary of the Honor Committee to insure there is a sufficient number of Honor Representatives for each company and office.

5. The Sub-Committee investigation should be as thorough as possible. The Sub-Committee should attempt to make all facts and conflicts as clear as possible, including, and especially, written evidence. Any full report of the investigation, however, should be as brief as possible and should contain only the facts.

6. If a case is referred to the Sub-Committee by the Honor Committee, the Sub-Committee should attempt to make all facts and conflicts as clear as possible, including, and especially, written evidence. Any full report of the investigation, however, should be as brief as possible and should contain only the facts.

7. When a case is referred to the Sub-Committee, the accused should be notified and should be allowed to select a representative of the Honor Committee, other than the members of the Sub-Committee, as his advisor. Normally the advisor will be the Company Honor Representative or be chosen by the choice of the accused. He will then insure that the accused's advisor is given access to the report of the hearing and all notes. He will also assist the advisor in making any additional investigation desired by the accused. Any facts favorable to the accused must not be omitted or overlooked. The Chairman of the Sub-Committee will be prepared to brief the Honor Committee Chairman upon request before the Full Committee meeting.

8. The Chairman of the Sub-Committee will coordinate with the Secretary of the Honor Committee to procure any additional aids for presentation of the case to the Honor Committee.

## II - Full Committee Procedures

A. The purpose of a hearing before the Cadet Honor Committee is to make a determination of the violation or non-violation of the Cadet Honor Code. This determination shall be made by an application of the facts of the case to the concepts and standards of the Cadet Honor Code and Honor System. In every case, the conduct of the accused shall be required to reflect these standards.

### B. General Procedures.

1. Full Committee meetings will normally take place in the Commandant's Conference Room and will be convened at the direction of the Honor Committee Chairman. All Honor Representatives are expected to attend each Full Committee meeting to insure that each company is properly informed as to the decisions of the Committee and to provide themselves with the requisite experience needed to make the best possible future decisions.

2. The accused may decide who (besides Honor Representatives) he desires to have attend his full committee hearing. He may discriminate by class, regiment or company only. Persons other than those permitted by the accused,



3. The Chairman will call the members of the jury and will call the names of every man on the roster, with the exception of the parent Regiment of the accused; until there are 12 men on the jury. Honor Representatives from the man's company are not precluded from voting on a jury; however, their names will be used as a last resort to obtain twelve unbiased voters. The Secretary and Vice-Chairman are eligible to vote as are the other Regimental Officers. However, the Vice-Chairman may vote only if a member. Each man will answer "yes" or "no" to his name, and it will be each man's responsibility to determine whether his previous knowledge of the acquaintance with the accused would prejudice his vote. In no case will a Representative from the man's company, the men that were in the Sub-Committee, or the Chairman of the Honor Committee vote on the innocence of an accused. If there are less than twelve men capable of serving on a jury then the case will be postponed to the next expedient date, as determined by the Chairman, unless the accused agrees to allow a jury of five Honor Representatives to decide his case. The accused must be assured and knowledgeable of the number of Honor Representatives on his case. After the jury has been selected, the Chairman will call them to take their seats.

The accused will be the first to testify before the Committee. All members of the room will rise each time the accused enters the room. He will state his case and will answer questions. Prior to the final decision, the Chairman will ask the accused if he has anything he wishes to say.

Witnesses will be called one at a time to testify before the Committee. The Chairman will instruct the witness that the Honor Committee is meeting to determine if the accused violated the Cadet Honor Code and will ask the witness questions of the case. After the witness has testified, anyone present at the hearing may ask questions, but only of the witness. Questions to members of the jury and other committee members will not be asked. After questions, the witness will be excused. This



10. If the Chairman of the Honor Committee is not present at the hearing the Vice-Chairman shall sit as Chairman. The Secretary shall make a tape recording of the Committee meeting. If the Secretary of the Honor Committee is not present, any member of the Honor Committee may sit as Secretary, as designated by the Chairman or Vice-Chairman.

11. A report of the proceedings of all Full Committee meetings will be prepared by the Chairman, Cadet Honor Committee and submitted to the Deputy Commandant.

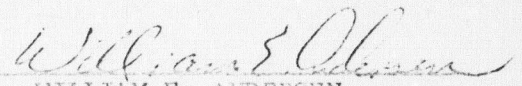
12. "Special Procedures for Cadets Who Report Themselves" may modify these procedures slightly for a particular case. The modifications are published in a supplement to Lesson 13 of the New Cadet Barracks 1972 Honor Instruction Book.

13. All policies and procedures of the Honor Committee are subject to revision by the First Class Honor Committee at any time they deem necessary.



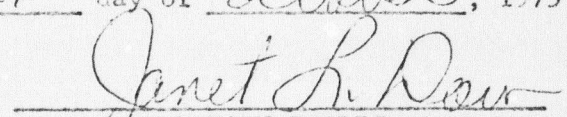
Cadets. During the year 1974-1975 I was a member of the  
Cadet Honor Committee, which was responsible for  
administering the administrative processing of honor cases. The document at-  
tached hereto, entitled Cadet Honor Committee Procedures, is a true and accurate  
copy of the Cadet Honor Committee procedures, promulgated by the 1974-1975  
Cadet Honor Committee, which were in effect at the time Plaintiff's honor  
case arose and under which his case was in fact processed by the Committee.

2. The Cadet Honor Committee Procedures included as an inclosure to  
the Commandant's Memorandum, dated 10 August 1973, Subject: USCC Processing  
of Cadet Honor Cases, were promulgated by the 1973-1974 Cadet Honor Com-  
mittee and were no longer in effect at the time Plaintiff's case was  
processed by the 1974-1975 Honor Committee since they were superseded by  
the procedures referred to above and attached hereto.

  
WILLIAM E. ANDERSEN

STATE OF NEW YORK )  
                          ) SS.  
COUNTY OF ORANGE )

SIGNED and sworn to before me this 24th day of October, 1975.

  
NOTARY PUBLIC

JANET L. DOW  
Notary Public, State of New York  
Appointed in Orange County  
Commission Expires Mar. 30, 1976



## HONOR COMMITTEE PROCEDURES

## 1. Investigation - Initiation.

a. Possible violations may be reported from the board of officers or cadets.

(1) Officers reported: Procedures established by Headquarters.

(2) Cadet reported: If the alleged violation is of a possible Honor violation will report such evidence to the company Honor Representative. If the company Honor Representative feels there is a possible violation, he will consult with the regimental Investigator (see 2b) to organize a sub-committee.

## 2. Investigation - Sub-committee.

a. The purpose of the sub-committee is to determine whether there is sufficient evidence to warrant the presentation of the case before a full committee.

b. The sub-committee shall be composed of three voting members, (a chairman, recorder, and a member). In most cases the RIO of the involved regiment will chair the sub-committee, however, at the discretion of the Chairman of the Honor Committee, a RIO from another regiment may be chosen or a vice-chairman of the Honor Committee may chair the sub-committee. The chairman of the sub-committee shall select the members from among the regimental first class Honor Representatives, and a recorder from among the regimental second class Honor Representatives. It will also be the duty of the chairman to select the time and place of the sub-committee meeting, arrange for the appearance of all witnesses and the cadet alleged to have violated the Honor Code. He will preside at the sub-committee meeting and present the case to the full Honor Committee, if necessary. It will be the duty of the recorder to take complete notes of the hearing, compile all statements of the cadet in question and witnesses, and write a final report. In the event the case goes to a full committee, the recorder will coordinate with the Secretary of the Honor Committee to insure there are sufficient copies of the report and any other relevant evidence for use by each board member and committee officer.

c. The sub-committee investigation should be as thorough as possible. The sub-committee should attempt to resolve all facts and conflicts by means of oral statements, questioning and any necessary written evidence. Any witnesses or the cadet in question may be recalled as many times as desired to accomplish this end.

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d. If the sub-committee recommends the dismissal of the allegation, the Chairman of the sub-committee will so notify the Chairman of the Honor Committee and forward a report of the hearing to him. The Chairman may approve the recommendation of the sub-committee after the review of the case or disapprove the recommendation and bring the case to full committee.

e. In the event the sub-committee decides to present the case to the Honor Committee or the Chairman disapproves the sub-committee recommendation of dismissal, the cadet in question will be notified and will be permitted to select a member of the Honor Committee, other than the member of the sub-committee, as his advisor. Usually, the advisor will be the company Honor Representative of the cadet in question but the choice is left to the individual. The chairman of the sub-committee will then inform the Chairman of the Honor Committee of this decision and forward a report of the hearing to him. He will then ensure that the individual's advisor is given access to all notes and the report of the hearing. He will assist the advisor in making any additional investigation desired by the individual. Any facts favorable to the cadet in question must be presented. The chairman of the sub-committee will be prepared to brief the Chairman of the Honor Committee upon request, before the full committee meeting.

f. The chairman of the sub-committee will coordinate with the Secretary of the Honor Committee to provide any additional aids for presentation of the case to the Honor Committee.

### 3. Full Committee Procedures.

a. The purpose of a hearing before a Cadet Honor Committee is to make a determination on whether or not the allegations against the accused are valid. This determination shall be made by an application of the facts of the case to the concepts and standards of the Cadet Honor Code and System.

b. Full committee meetings will normally take place in the Commandant's Conference Room, and will be convened at the direction of the Honor Committee Chairman. All Honor Representatives are expected to attend each full committee meeting to ensure that each company is properly informed as to the decisions of the committee and to provide themselves with the experience needed to make the best possible future decisions.

c. The cadet alleged to have violated the Honor Code may decide whom he desires to attend his hearing. He may discriminate by class, regiment, company or by individuals. Only those permitted by the individual, and Honor Representatives will be allowed to attend the full committee hearing.

d. The chairman will call the meeting to order and shall instruct those in attendance on the need for proper decorum and questioning



procedure. He will call upon the chairman of the sub-committee (or the appropriate investigating officer if a sub-committee hearing had been waived) who will present the facts of the case as established in the sub-committee hearing. The following points should be brought out by this introduction: name and company of the cadet in question, witnesses involved, the general nature of the suspected violation and points of conflict. Questions of a general nature may be asked of the Honor Representative presenting the case at this time. It is at this time that members of the Honor Committee shall make the determination in their own minds as to whether or not they are qualified to sit as heard members if called upon.

e. When the questions have been answered to the satisfaction of the Chairman he will direct the Secretary to call the role. At this time the Secretary will call the name of every man on the roster, with the exception of the men in the parent regiment of the cadet in question, until there are 12 men that are eligible to sit on the board. Honor Representatives from the same regiment as a cadet in question are not precluded from voting on a full committee; however, their names will be called only as a last resort to obtain twelve disinterested voters. The Secretary and a Vice-Chairman are eligible to vote as are the Regimental Investigating Officers. Note that a Vice-Chairman may vote only if a member of a full committee. Each man will answer "yes" or "no" to previous knowledge of the case or whether his acquaintance with the cadet in question would prejudice his vote. In no case will the Honor Representative from the man's company, the men that were involved with the sub-committee, or the Chairman of the Honor Committee vote on the validity of the allegations against the cadet in question. After the membership of the full committee has been selected, the Chairman will direct the committee members to take their seats.

f. The cadet in question will be the first to testify before the committee. All cadets present in the room will rise each time this individual enters or leaves the room. He will present his side of the case and will answer questions. Prior to the final discussion and vote, the presiding officer will ask the individual if he has anything he wishes to say to the committee.

g. All witnesses will be called one at a time to testify before the committee. The presiding officer will instruct the witnesses that the Honor Committee is meeting to investigate the alleged violations of the Honor Code by the cadet in question and will ask the witness to tell what he knows about the case. After the witness has testified he will be questioned by the members of the full committee. When there are no further questions, the witness will be excused. This procedure will be repeated with each witness.

h. After all witnesses, including the cadet in question, have testified and been questioned, the case will be discussed. All relevant points of view and possible conflicts in testimony should be brought out in this discussion. If at any time the full committee or the presiding



officer wishes to recall a witness or the cadet in question, he will be recalled in order to clarify any points.

i. Following the open discussion, the members of the full committee will engage in a closed discussion. After the closed discussion of the case appears completed, the presiding officer will ask whether there is any member of the full committee opposed to a vote. The presiding officer will then summarize the case, including all relevant points and possible conflicts. The Secretary will then read aloud the allegation against the cadet in question and the members of the full committee will vote by secret ballot.

j. When the decision has been determined by the vote of the full committee, the cadet in question will be recalled. If the findings of the committee supported the allegation against the individual they will remain seated. The cadet in question will be informed of the decision of the committee and will again be allowed to make a statement to the committee.

k. If the decision of the board did not support the allegation against the individual all persons present will rise upon his entrance. He will be informed of the committee's decision, permitted to make a statement to the committee and be allowed to return to his company.

l. If the Chairman of the Honor Committee is not present at the case, a Vice-Chairman shall preside.

m. The Secretary shall make a tape recording of the full committee meeting, for the committee's use only. If the Secretary of the Honor Committee is not present, any member of the Honor Committee may sit as Secretary, as designated by the Chairman or a Vice-Chairman.

n. A report of the proceedings of all full committee meetings will be prepared by the Chairman, Cadet Honor Committee, and submitted to the Deputy Commandant by 1000 hours on the day following the meeting.

4. Procedures when allegations of violations of the Honor Code are found:

a. Cadets determined by the Cadet Honor Committee to have violated the Cadet Honor Code will be immediately escorted to the Officer-in-Charge, USCC, who may instruct subject cadet to move into Transient Barracks and notify his parents of the Honor Committee's findings.

b. From this point onward, the Cadet Honor Committee is not involved in the procedures against a cadet. The cadet may resign or request a Board of Officers be appointed to hear his case.



(1) Resignation: In the event a cadet elects to resign he will begin immediate out-processing at the direction of Headquarters, USCC.

(2) Board of Officers: If a cadet elects to have a Board of Officers appointed to hear his case, the Commandant will prepare correspondence to the Superintendent requesting that he appoint a Board of Officers to investigate the case. Board of Officers findings, if adverse and approved by the Superintendent, are forwarded to Headquarters, Department of the Army, for final action. The Deputy Commandant of Cadets will inform the Cadet Honor Committee of the final disposition of the case. The Cadet Honor Committee, in turn, will inform the Corps of Cadets.



C5 6 September 1974

12.13. CRIMINAL CONVICTION. A cadet who has been convicted of a criminal offense by a court of domestic or foreign civilian jurisdiction or by court-martial, may be separated from the Military Academy. (C5, 6 Sep 74)

12.14. VIOLATION OF THE CADET HONOR CODE. The Cadet Honor Code states that a cadet will not lie, cheat or steal, nor tolerate those who do. A cadet who violates the Cadet Honor Code shall be separated from the Military Academy. (C5, 6 Sep 74)

12.15. MAJOR DISCIPLINARY OFFENSE. A cadet who commits a major disciplinary offense may be separated from the Military Academy or subjected to disciplinary action under paragraph 12.03 of this regulation. A major disciplinary offense is one that is punishable under the Uniform Code of Military Justice by confinement for a term of six months or more. If such offenses are processed for administrative separation under this provision, an informal preliminary inquiry will be conducted without utilizing the procedures of the Cadet Disciplinary System. (C5, 6 Sep 74)

12.16. CONSCIENTIOUS OBJECTION. A cadet who applies for discharge or reclassification on the ground of conscientious objection will, at the discretion of the Superintendent, be placed on leave of absence pending action on his application by Department of the Army. If the application for discharge is approved by the Department of the Army, he will be separated accordingly. If the application for discharge or reclassification is disapproved or the cadet is reclassified by the Department of the Army, he will be permitted to resign or will be involuntarily separated from the Military Academy. (C5, 6 Sep 74)

12.17. MARRIAGE. Any cadet who is married prior to graduation shall be separated from the Academy. (C5, 6 Sep 74)



## ARTICLE 16

## SEPARATIONS

16.01. GENERAL. Department of Defense Directive 1332.23, dated 9 May 1963 provides for the following direction concerning separation of cadets prior to completion of the course of instruction, or subsequent to graduation or refusal to accept an appointment as a commissioned officer:

- a. A cadet who enters the United States Military Academy directly from a civilian status assumes a military service obligation of six years (10 U.S.C. 651).
  - b. A cadet who is separated from the Academy because of demonstrated unsuitability, unfitness, or physical disqualification for military service will be discharged.
  - c. A cadet who enters the Academy directly from a civilian status and resigns or is separated from the Academy prior to the commencement of the Second Class Academic Year will be discharged. A resignation tendered by a Fourth or Third Classman will be accepted when found to be in the best interests of the service. A cadet who tenders a resignation will be required to state a specific reason for his action.
  - d. A cadet who enters the Military Academy from the Regular or Reserve Component of any military service or resigns or is separated from the Military Academy prior to the commencement of the Second Class Academic Year will revert to his former status for completion of any prior service obligation. All service as a cadet is counted in computing the unexpired portion of the enlistment or period of obligated service (10 U.S.C. 514(b)).
  - e. With the commencement of the Second Class Academic Year, a First or Second Classman who resigns or is separated prior to completing the course of instruction, except for physical disqualification, unfitness, or unsuitability, normally will be transferred to the Reserve Component in an enlisted status and ordered to active duty for not less than two years (10 U.S.C. 4348(b)).
- (1) Completion or partial completion of service obligation acquired prior enlistment in no way exempts a separated cadet from being transferred to a Reserve Component and ordered to active duty under the provisions of 10 U.S.C. 4348(b)).
  - (2) When separation occurs as a result of deficiencies which are not considered willful, the active duty provision may be waived by the Department of the Army, upon recommendation of the Superintendent.
- f. In any case where it is necessary to determine whether a cadet resigned or was separated prior to or following the commencement of the Second Class Academic year, the critical date is the date that action is initiated, either by the cadet or by authorities at West Point.



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C5 6 September 1974

g. Any First Classman who completes the course of instruction and declines to accept an appointment as a commissioned officer will be transferred to the Reserve Component in an enlisted status and ordered to active duty for four (4) years (10 U.S.C. 4348(b)).

h. In each case where a cadet is separated from the Military Academy, the Selective Service System will be notified of the individual's change in status.

i. The agreement statements signed by all entering Fourth Classmen (USMA Form 5-50) will contain the active duty and discharge provisions in a-g above.

j. The provisions of paragraph 5.18 of these regulations will be brought to the attention of each cadet separated for any reason from the United States Corps of Cadets. (AGPB-M 351, 11, USMA 10 April 1962).

k. An annual report concerning separated cadets will be submitted to the Assistant Secretary of Defense (Manpower and Reserve Affairs) not later than 30 August of each year. This report will contain the information required by paragraph VI, DOD Directive 1332.23, dated 9 May 1968.

l. Where a hearing before a board of officers is either authorized or required before a cadet is separated under Article 16 of these regulations, the appointing authority will provide the board with a competent reporter. If a competent enlisted or Government civilian employee reporter is not available, a civilian contract reporter may be employed.

16.02. UNQUALIFIED RESIGNATIONS. a. A cadet who tenders an unqualified resignation from the Military Academy will, upon acceptance by Headquarters, Department of the Army, be separated in accordance with applicable procedures below.

b. Unless otherwise authorized by the Superintendent, a cadet who is under 21 years of age must inclose the written acknowledgment of his parents or guardian with his letter of resignation.

c. A cadet may withdraw his tender of resignation upon approval of the Superintendent until such time as it is forwarded to Headquarters, Department of the Army. Thereafter, it may be withdrawn only upon the approval of Headquarters, Department of the Army.

d. Each letter of unqualified resignation will comply with the format of Figure 1 to this Article. (C5, 6 Sep 74)

16.03. PROCEDURES FOR COURT-MARTIAL, BOARD OF OFFICERS, OR RESIGNATION.

a. A cadet who is subject to separation or punitive action under the provisions of Article 12 of this Regulation, except paragraph 12.16, may, in the discretion of the Superintendent, be tried by court-martial if the conduct



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includes a violation of the Uniform Code of Military Justice, be brought before a board of officers convened by the Superintendent, or be permitted to resign in lieu thereof.

b. In the event of trial by court-martial, the action taken will be in accordance with the provisions of the Uniform Code of Military Justice, the Manual for Courts-Martial (U. S.), and applicable regulations.

c. If the cadet appears before a board of officers, the board shall consist of one colonel who shall be the president and at least two other field grade officers who shall be voting members. For good cause shown, the Superintendent may modify the grade restriction for the members. The board will make findings with respect to the matter under investigation and, if appropriate, will make recommendations concerning separation from the Military Academy, discharge from the Army, and the type of discharge. The board may consider the cadet's prior conduct and any part of his record of military service that it deems pertinent. The board will submit a report of its proceedings and its findings and any recommendations to the Superintendent. The Superintendent will prepare a proposed recommendation to Headquarters, Department of the Army. Prior to the forwarding of the case to Headquarters, Department of the Army, the cadet concerned will be provided an opportunity to review all the relevant material in the file, including the Superintendent's proposed recommendation, subject to security standards and questions of privilege. The SJA review of the board proceedings is considered a privileged attorney-client communication, and will not be made available to the cadet concerned. The cadet will be permitted to rebut any adverse evidence and to submit any statement or relevant evidence he desires. His submission will be reduced to writing and incorporated into the file. The Superintendent should then reconsider his proposed adverse recommendation, in light of the submitted material, to determine whether Secretarial action is still believed appropriate. Should the cadet choose not to submit a statement or other evidence, or fails to do so within a reasonable time, the completed file should reflect that fact.

d. If permitted by the Superintendent, a cadet may tender a resignation from the Academy after having been advised of the implications thereof. The resignation shall be in lieu of trial by court-martial or in lieu of appearance before a board of officers. It shall be processed as directed by the Superintendent and shall include pertinent information as set forth in Figure 2 to this Article.

e. A resignation under the provisions of this paragraph may result in the issuance of a discharge certificate under other than honorable conditions. The resignation will include a statement of counsel, as shown in Figure 2.

f. A cadet may withdraw his tender of resignation upon approval of the Superintendent until such time as it is forwarded to Headquarters, Department of the Army. Thereafter, it may be withdrawn only upon the approval of Headquarters, Department of the Army.



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g. A cadet who tenders a resignation under the provisions of this paragraph may submit statements in his own behalf. Prior to submitting the letter of resignation, the cadet concerned will be afforded the opportunity to consult with appointed military counsel, or military counsel of his own choice if he is reasonably available, or civilian counsel at his own expense. (C5, 6 Sep 74)

16.04. SEPARATION DOCUMENTS. a. All documents pertinent to the separation of a cadet from the Academy will be forwarded to Headquarters, Department of the Army, for final action. The Superintendent will make recommendations concerning separation from the Academy and discharge from the service. If discharge is recommended, the type of discharge certificate recommended to be issued will be specified.

b. The discharge certificates issued to cadets separated administratively will be of the following types:

- (1) Honorable Discharge - DD Form 256A.
- (2) General Discharge - (Under Honorable Conditions) DD Form 257A.
- (3) Discharge Under Other than Honorable Conditions - DD Form 794A.

c. A cadet who is separated and discharged under the provisions of Article 9 and under paragraphs 12.14, 12.16 and 12.17 of this Regulation normally will be issued an Honorable Discharge certificate unless Headquarters, Department of the Army, determines that the facts and circumstances surrounding the cadet's separation warrant issuance of a discharge of lower character. (C5, 6 Sep 74)

16.05. RECORD OF DISENROLLMENT. Upon receipt of a request from another service for information concerning a cadet disenrolled from the United States Military Academy, a Record of Disenrollment, DD Form 785, will be completed by the Superintendent and returned directly to the requesting service. One copy of the completed form will be forwarded to the Adjutant General, Department of the Army. (C5, 6 Sep 74)



that this is sound training for future requirements in the Service. Any officer in the Army is expected to report accurately and completely on any official matter regardless of any blame which might accrue to himself because of it.

In analyzing a specific act to determine whether or not it was a violation of the Honor Code certain guidelines are used. There are two criteria which an act must meet to be a violation:

*First, the accused must have or attempted to have lied, cheated or stolen, or tolerated such action on the part of another cadet.*

In making this determination it is kept in mind that a cadet must live within the spirit as well as within the letter of the Code and System. A cadet's honor should be so developed that the Honor Code and honorable conduct in every facet of his everyday life are synonymous. His revulsion to lying, cheating, stealing or tolerating such conduct in other cadets should be instinctive.

*Second, the accused must have had the intent to lie, cheat, steal, or tolerate such action on the part of another cadet.*

In making this determination, it is not necessary that the accused be thinking about the Honor Code or have the intention to breach this Code to meet this criterion. The simple fact that he intended to lie, cheat, steal or tolerate is sufficient.

## THE CADET HONOR COMMITTEE

### COMPOSITION

The Cadet Honor Committee, which is directly charged with the supervision and administration of the Honor Code and System, consists of one First Classman elected from each company; the Chairman; Vice Chairman; the Cadet First Captain, (ex-officio), and four investigating officers. Its procedures are designed to insure a thorough and objective investigation and a fair and impartial hearing for each cadet accused of a violation.

In order to provide continuity of administration, during March of each year, the Third Classmen of each company elect their Honor Representatives. At the same time the previously elected representatives of the Second Class elect their officers in preparation for the assumption of their duties as the Official Cadet Honor Committee when the First Class graduates in June. Elected officers include the Chairman, Vice Chairman, Secretary and four investigating officers. Replacements are then elected from each of those companies from which the Committee officers were elected. This provision insures that there is an Honor Representative in each company who is not encumbered by the administrative and supervisory duties of the Honor Committee.



The Company Honor Representative is the workhorse of the organization. He represents the members of his company on the Honor Committee in determining whether or not the standards of honor of an accused are compatible with the Honor Code. He instructs and orients the incoming class during the summer, and all classes during the Academic Year, on the precepts of the Code and the workings of the System. In addition, he keeps his company informed concerning members of the Corps found guilty of violations of the Code. In a sense, he interprets matters of honor on the individual company level. He is also the direct link between the Company Tactical Officer and the cadets in his company where questions of honor are concerned. In addition, Company Honor Representatives are assigned as "liaison representatives" to specific Academic Departments and to major elements of the Departments of Tactics.

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### PROCEDURES

Each cadet, the Corps as a whole, the Honor Committee, and the authorities at the Military Academy share the grave responsibility for handling an alleged honor violation. The cadet is responsible to report the violation should it come to his attention. The Honor Committee, acting for the Corps, investigates and determines whether or not the alleged offender has actually transgressed the Honor Code. Procedures exist for members of the Corps to attend Committee hearings. The procedures which are followed in handling cases under the Honor Code conform to established practices, and are known to the entire Corps. First, there is a preliminary investigation by a sub-committee of three members of the Honor Committee. Second, the full Committee conducts a hearing during which the accused as well as all witnesses testify. All members of the Honor Committee and also any class specified by the accused may attend the hearing and take part in the questioning. Twelve members are designated, however, to serve as the tribunal on any particular case. Voting is secret and a finding of guilty requires a unanimous concurrence of the twelve man tribunal. In every case the findings and recommendation of the Committee are made known to the accused. He is completely briefed so that he will understand why the Committee came to its conclusion.

If there be a finding of guilty, the Commandant reviews the case with his advisors and with the Chairman of the Honor Committee. He then interviews the accused after advising him of his rights, reminds him of the findings and recommendations of the Committee, and, in effect, extends him the option of resigning or having his case considered by a Board of Officers. The accused is urged to confer with his parents and, if he desires, to seek legal advice before he makes his decision.

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Members of the Honor Committee spare no effort to insure a complete and impartial hearing in an effort to arrive at a just decision. The Committee considers the accused's knowledge of and understanding of the Honor Code and its application to his life at USMA, his awareness of the penalty for violating the Code, his intent, the circumstances surrounding the alleged violation, and, in the case of a false statement, the opportunity he has had for correcting it. Account also is taken of the position of the New Cadet, but he is not excused from living up to his obligations under the Code merely because of his status as a New Cadet. If there is any doubt of the cadet's understanding of the Code, or of his guilt, the Committee will drop the charges.

### THE FUTURE OF THE HONOR CODE AND SYSTEM

The essence of the Honor Code -- that a cadet will not lie, cheat, or steal -- has never changed. The Honor Code and System is kept under constant scrutiny by the Honor Committee which is charged with guarding against the birth of practices inconsistent with the Honor Code. Evolutionary changes in the administration of the System, but not the Code itself, may be expected in the future just as they have occurred in the past, as the need arises, to keep the System practical and realistic in its application to cadet life.

The operation of the Honor Code and System is monitored closely by the Deputy Commandant of Cadets who advises the Cadet Honor Committee. His position enables him to observe the application of the System, conduct frequent discussions with the Chairman of the Honor Committee, provide guidance to the Committee, and insure that problems are adequately aired and that proposed refinements to the System are carefully considered. The liaison representatives from the Honor Committee make informal contacts with the Academic Departments and within the Department of Tactics. These contacts provide the opportunity for open discussion of identified or possible problems. These more or less continuing reviews are supplemented by an annual review conducted by the Superintendent's Honor Review Committee. This Committee, consisting of senior officer members of the Staff and Faculty, examines the impact of the Code on the Corps and the general operation of the System and its particular application to academic requirements and discipline. It should be appreciated that fundamental changes in the Honor System are not accomplished by fiat. They result from the close, detailed collaboration by the Honor Committee, the Commandant of Cadets, and the Superintendent.



particular close association with any cadets.

RC: So you were a tactical officer for two years?

CPT HAYES: Right.

RC: Of what company?

CPT HAYES: C-2.

RC: Did this experience leave you with any inclinations about the honor code as it presently exists, feeling that it was too strictly enforced or too loosely enforced?

CPT HAYES: I think in, you know, in any given case you might have a particular feeling one way or another. As a tactical officer if you turned in a case and the honor committee voted a different way on the case than you thought, then you might have a feeling but that doesn't mean that you don't - - - you don't abide by their decision or you don't accept it. In the final analysis something came up that you were unaware of. So - - - But I have no - - - I have nothing that would lead me to believe that the honor committee is not doing its job or the honor in any way is particularly different than when I was a cadet.

RC: Did you have the occasion to turn anyone in on an honor violation?

CPT HAYES: Say it again?

RC: Did you ever turn anyone in on an honor violation as a cadet?

CPT HAYES: Yes, I have.

RC: Were those allegations sustained by the cadet honor committee or - - -

CPT HAYES: I've had some of both.

RC: Was there any resentment on your part when it was not sustained?

CPT HAYES: No.

RC: Would you have resented it had the cadet honor committee found an individual and the board of officers acquitted him?



CPT HAYES: No.

RC: Were you ever aware of any resentment in your company concerning - - -

CPT HAYES: Of an officers board reversing a - - -

RC: Right.

CPT HAYES: I never had a particular cadet in my company who appeared before an officers board. I've had cadets in the regiment but I'm not aware of any resentment on the part of the cadets.

RC: You stated that - - - you used the phrase of an officers board reversing the honor board. So then you do feel like there is some weight to be attached to the honor board proceedings?

CPT HAYES: Oh, yes, certainly. I think there has to be a certain amount of weight attached to it in the sense that the cadets found the cadet - - - The honor committee, in their estimation found the cadet guilty of violating the honor code. That does not have a particular impact on the proceedings that take place in an officers board, but - - - The rules of evidence are different and - - - And I've seen cases go both ways and generally speaking I never know one way or another why the case went whichever way it went. I had no real gut feelings on it.

RC: But you would say that the fact that he was found by the cadet honor committee is a consideration that would be in your mind today?

CPT HAYES: Well, I don't think that you can - - - if you were talking about the way that I would come up with a vote, no. But I think that a cadet would not appear before a board of officers if he had not have been found guilty by the honor committee and, therefore, I say it has to have an impact of some sort, psychological or whatever. If it's a hard fact, cold fact, no.

RC: You would consider then that a vote to acquit today would be a reversal of the cadet honor committee determination?

CPT HAYES: Yes.

RC: Do you know either Major Crissman from ES&C - - - from Engineering or Captain Hausman from ES&GS?



## PROCEEDINGS OF THE BOARD OF OFFICERS

PRES: This hearing will come to order.

Cadet Keith Gaines, this is a board of officers called to determine whether you, Cadet Gaines, did violate the cadet honor code on or about 30 April 1975 and on or about 2 May 1975.

Let the record show that this hearing commenced at 0859 hours, on the 29th of May.

REC: Sir, I believe that's the 30th.

PRES: 30 May, I'm sorry, in the hearing room in the Department of Law at West Point, New York.

Cadet Gaines, you may, if you desire, employ counsel in this hearing. Do you desire counsel?

RESP: Yes, Sir.

PRES: Speak up, please.

RESP: Yes, Sir, I am represented.

PRES: Do you desire as your counsel Captain Bishop who has been appointed to represent you?

RESP: Yes, Sir, I do.

PRES: The reporter will be sworn.

(The reporter, Joyce G. Shea, was sworn by the recorder.)

REC: The board is appointed by Letter Orders Number 501, dated 28 May 1975, Headquarters United States Military Academy, West Point, New York. Copies of these orders have been furnished to each member of the board, respondent's counsel, and the respondent. Request permission to omit the reading of the orders, Sir.

PRES: Permission granted.

REC: All of the members of the board named in the appointing orders are present.

At this time, Sir, I request the appointing orders be attached to the proceedings and marked as Exhibit 1.

PRES: The orders will be so marked and attached.

REC: The general nature of the hearing is as follows: to invent the truth of and enter findings upon the following allegation, that Cadet Keith D. Gaines, Company E-3, Class of 1975, United States Corps of Cadets, is alleged to have violated the cadet honor code in that he did, at West Point, New York, on or about 30 April 1975, lie, by stating to Cadet Richard Anderson that he had been excused from attending his surveying class by his instructor, Captain William Hausman, when in fact, he had not been so excused, and on or about 2 May 1975, lie by stating to Captain William Hausman that he was on a concrete class field trip on 30 April 1975 when in fact he was not.

At this time I offer into evidence what has been marked as Exhibit 2, a letter, Headquarters United States Military Academy, Special Instructions to the Board, addressed to Colonel Buckley, a copy of which is before each member of the board, the respondent, and respondent's counsel.

PRES: Does the respondent have any objections?

RC: The respondent has no objection.

PRES: The letter will be attached to the board proceedings and marked as requested.

Does the respondent desire to challenge any member of the board for cause?

RC: Sir, at this time the respondent asks permission to voir dire the members to ascertain if there are any grounds for challenge for cause. We would also ask that the voir dire be conducted individually with the president or the senior member of the board remaining and the other members excused during the voir dire.

PRES: Request granted. Will you gentlemen - - - Who would you care to have stay first?



8 JUL 1975

RUA

SUBJECT: Board of Officers Proceedings

THRU: Captain Burk E. Bishop  
 Counsel for Respondent  
 Department of Law  
 United States Military Academy  
 West Point, New York 10996

TO: Cadet Keith B. Gaines  
 Company E-3  
 United States Corps of Cadets  
 West Point, New York 10997

SIA COMEBACK COPY

1. The Department has approved the findings and recommendation of the Board of Officers in the case of Cadet Keith B. Gaines and proposes to recommend to the Secretary of the Army that you be separated from the United States Military Academy and, upon separation, transferred to the U.S. Army Reserve and ordered to active duty as an enlisted man in the grade of E-4 for a period of three years in accordance with paragraph 15(c)(1), AR 1512-205.

2. You previously have been provided with a verbatim transcript of the proceedings of the board which contains all relevant material in the file. You now have the opportunity under paragraph 15.04c, Regulations, USA, to submit any adverse evidence and submit any statement or relevant evidence in your behalf. Any such statement must be in writing and will be incorporated into the file.

3. Any statement or other evidence should be submitted to this Headquarters, AFM: Adjutant General, within five working days of receipt of this communication. If no submission is received by that time, the case will be processed to disposition.

OF 100-211111-111

PREPARED BY: [illegible]  
 Colonel, AGC  
 [illegible]

BEST COPY AVAILABLE

Mr. Pease/pai/205-147  
 Mr. Pease/pai/205-147  
 (20 Jul 75)  
 Cadet Separation

Mr. HILFECEN, 200 Stovall Street, Alexandria, VA 22332 8 SEP 1975

TO: ~~The Superintendent, U. S. Military Academy, West Point, NY 10996~~

1. Your recommendations are approved.
2. Cadet Keith D. Gaines will be separated from the United States Military Academy, transferred to the United States Army Reserves in an enlisted status, and immediately ordered to active duty for three years as an E-4.

BY ORDER OF THE SECRETARY OF THE ARMY:

4 Incl  
 nc

*Edward Greer*  
 EDWARD GREER  
 Major General, USA  
 Acting Commander

*file in*